

**REMARKS/ARGUMENTS**

Claims 1-36 are currently pending. Claims 13 and 25 are amended herein. Applicant acknowledges receipt of the above-identified Office Action, and respectfully traverses the Office Action in its entirety.

**REJECTIONS UNDER 35 U.S.C. §112, SECOND PARAGRAPH**

Claims 13 and 25 stand rejected under 35 USC §112, second paragraph as being indefinite. Applicant respectfully traverses. However, in an effort to expedite allowance of the instant application, Applicant has amended claims 13 and 25 to better reflect Applicant's claimed invention. Applicant's amendments having rendered the rejection moot, Applicant respectfully requests that the rejections be withdrawn.

**REJECTIONS UNDER 35 U.S.C. §102(e)**

Claim 1 stands rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Application publication No. 2005/0044127 to Jaiswal et al. ("Jaiswal"). Applicant respectfully traverses. Applicant's claimed invention is directed to a system, methods, and computer readable media used in a clustered, multiprocessor computing system, whereby a set of computer-readable instructions is associated with a specific cluster, and more specifically with a specific processor within the cluster. As recited in the claims, Applicant's claimed invention facilitates selection of the appropriate processor based, at least in part, on the priority associated with the processor and the cluster of which it is a member.

Jaiswal is directed to dynamic load distribution within a session initiation protocol ("SIP") network. As disclosed in the Abstract and in paragraphs [0001], [0011]-[0018], a SIP network is a network that provides interactive user sessions involving multimedia elements such as video, voice, chat, and gaming (paragraph [0011]), and is used to establish, modify, and terminate multimedia sessions and calls (paragraph [0013]). For a cited reference to anticipate a claim, all elements of the claim must be present in the reference. Applicant respectfully asserts that Jaiswal fails to teach or suggest all elements of Applicant's claims. More specifically, while Jaiswal is directed to load balancing, the underlying architecture employed in Jaiswal renders it inapplicable to a multiprocessor system as recited in Applicant's claims. In Jaiswal, a sender (e.g., an Internet radio station, or a calling telephone) initiates a session with one or more recipients. The sender has knowledge of the recipients before the session is initiated (e.g., by the

recipient subscribing to a service), and a connection is made with that recipient. By way of example, assume an internet telephone call were being placed. In Jaiswal, the sender knows the recipient's IP address by way of a SIP registration at some prior time, and can direct the call to the recipient. By contrast, in Applicant's claimed invention, the processor receiving the "call" (i.e., the computer-readable instructions) is not known in advance, since the processor selection is made based on priorities associated with the cluster to which the processor belongs, as well as the processor's own priority within the cluster. This is essentially the equivalent of a telephone call in Jaiswal being routed to a random recipient.

Applicant respectfully asserts that Jaiswal is so far unrelated to Applicant's claimed invention that it completely fails to teach or suggest all elements of the claimed invention. Applicant therefore respectfully requests that the Examiner withdraw the rejection.

**REJECTIONS UNDER 35 U.S.C. §103(a)**

Claims 1-12 and 25-36 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,105,053 to Kimmel et al. ("Kimmel") in view of U.S. Patent No. 7,191,349 to Kaushik et al. ("Kaushik"). In rejecting the claims, the Examiner asserts that Kimmel teaches that a cluster is selected as a function of its load value, and that Kaushik discloses that the priorities of threads of the cluster is equal to the priority of the cluster. Applicant respectfully traverses. First, Applicant's claimed invention does not require that the cluster priority be a function of the priority of the processors within the cluster. Therefore, the Examiner's argument is fundamentally flawed, as the specific limitations recited in Applicant's claims are not present in either Kaushik or Kimmel, or the combination thereof.

Furthermore, Applicant respectfully asserts that the Examiner's combination of Kaushik and Kimmel is purely based on hindsight. The Examiner asserts that "Because clusters are the sum of processor, it would be obvious to one of ordinary skill in the art to deduce: [that the priorities of a cluster is a function of the priorities of threads in the cluster]". Applicant respectfully suggests that the Examiner's arguments supporting this assertion, which appear in paragraph 41 of the instant Office Action, are based purely on a selective culling of information from the references, and absent the motivation provided by Applicant's invention, one skilled in the art would not make the logical leap that the Examiner makes in the Office Action. A patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. KSR Int'l Co. v. Teleflex, 127 S.Ct 1727,

1741 (2007). As former Chief Judge Markey of the Federal Circuit has stated, “virtually all inventions are ‘combinations’, and ... every invention is formed of ‘old elements’ .... Only God works from nothing. Man must work with old elements.” H.T. Markey, *Why Not the Statute?* 65 J. Pat. Off. Soc’y 331, 333-334 (1983). The factfinder should be aware of the distortion caused by hindsight bias and must be cautious of arguments reliant upon ex post reasoning. KSR Int’l Co. v. Teleflex, 127 S.Ct at 1742. In determining whether a claimed invention is an obvious combination of prior art references, it must be shown there is an apparent reason to combine the known elements in the fashion claimed. Id. at 1741. To facilitate review, this analysis should be made explicit. Id. The Examiner has not advanced a sufficient rationale as to why a person skilled in the art would have been motivated to combine Kaushik and Kimmel in the manner described in the present Office Action, other than that provided by the hindsight of Applicant’s patent application. Applicant therefore respectfully requests that the Examiner withdraw the rejection.

Claim 13 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Jaiswal in view of U.S. Patent application Serial No. 2004/0034743 to Wolrich et al (“Wolrich”). Applicant respectfully traverses. Applicant respectfully traverses. As recited above with respect to the rejection of claim 1, Applicant respectfully asserts that Jaiswal is so far outside the field of endeavor as to be inapplicable to Applicant’s claimed invention. Furthermore, even if Jaiswal is seen as applicable, Jaiswal does not teach or suggest many elements of Applicant’s claimed invention, and Wolrich fails to address these deficiencies. Applicant therefore respectfully requests that the Examiner withdraw the rejection.

Claims 14-24 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Jaiswal in view of U.S. Patent application Serial No. 2004/0034743 to Wolrich et al (“Wolrich”) and further in view of Kimmel. Applicant respectfully traverses. As recited above with respect to the rejection of claim 1, Applicant respectfully asserts that Jaiswal is so far outside the field of endeavor as to be inapplicable to Applicant’s claimed invention. Furthermore, even if Jaiswal is seen as applicable, Jaiswal does not teach or suggest many elements of Applicant’s claimed invention, and Wolrich and Kimmel, both alone or in combination, fail to address these deficiencies. Applicant therefore respectfully requests that the Examiner withdraw the rejection.

**CONCLUSION**

Having responded to all objections and rejections set forth in the outstanding Office Action, it is submitted that the currently pending claims are in condition for allowance and Notice to that effect is respectfully solicited. Additional characteristics or arguments may exist that distinguish the claims over the prior art cited by the Examiner, and Applicants respectfully preserve their right to present these in the future, should they be necessary. In the event that the Examiner is of the opinion that a brief telephone or personal interview will facilitate allowance of one or more of the above claims, he is courteously requested to contact applicant's undersigned representative.

**AUTHORIZATION**

The Commissioner is authorized to charge any additional fees associated with this filing, and credit any overpayment, to Deposit Account No. 19-3790. If an extension of time is required, this should be considered a petition therefor. If the fees associated with a Request for Continued Examination are filed herewith, this should be considered a petition therefor.

Respectfully submitted,

/ James E. Goepel /

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James E. Goepel (Reg. No. 50,851)  
Attorney for Applicant

**Unisys Corp.**  
Township Line and Union Meeting Roads  
Unisys Way E8-114  
Blue Bell, PA 19424  
(215) 986-6188

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